U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6783238

Date: SEPT. 23, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a development director, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had satisfied only one of the ten initial evidentiary criteria for this classification, of which he must meet at least three. The Petitioner appealed that decision to our office, and we dismissed his appeal. We determined that the Petitioner met the requisite three evidentiary criteria but concluded in a final merits determination that he did not establish his sustained national or international acclaim and that he is among the small percentage of individuals at the very top of his field.

The matter is now before us on a motion to reconsider. The Petitioner submits a brief, together with new and previously submitted evidence, and asserts that he has established his eligibility for the requested classification.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the motion to reconsider.

II. MOTION REQUIREMENTS

A motion to reconsider must (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause

for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. LAW

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

III. ANALYSIS

The issue before us is whether the Petitioner has established on motion that our decision to dismiss his appeal was based on an incorrect application of law or USCIS policy. The Petitioner must specify the factual and legal issues raised on appeal that were decided in error or overlooked in our initial decision.

In dismissing the appeal, we determined that the Petitioner satisfied three of the initial evidentiary criteria at 8 C.F.R. 204.5(h)(3)(i)-(x). Specifically, he established that he had participated as a judge of the work of others, authored scholarly articles in a professional publication, and performed in a leading or critical role for organizations with a distinguished reputation. Moreover, we conducted a final merits determination in which we reviewed the totality of the record, including evidence relating to additional claimed criteria at 8 C.F.R. § 204.5(h)(3).[1] Based on this review, we found that the Petitioner did not establish his sustained national or international acclaim and that he is one of that small percentage at the very top of his field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

On motion, the Petitioner asserts that he is submitting "additional proof" to establish that his participation on judging committees for museum and theatre reconstruction projects in the city of [redacted], Russia is "definitely indicative of the Petitioner's sustained national acclaim" because both were "highly distinguished projects." The Petitioner does not claim that we incorrectly applied the law or USCIS policy in our assessment of the previously submitted evidence related to his judging experience and

[1] The Petitioner also claimed to meet the criteria related to lesser nationally or internationally recognized awards, memberships in associations that require outstanding achievements, published materials in professional or major trade publications, and original contributions of major significance. *See* 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii) and (v).

instead requests that we consider the new evidence related to these projects, which is submitted for the first time on motion. However, a motion to reconsider must establish that our prior decision was incorrect based on the evidence of record at the time of the initial decision. *See* 8 C.F.R. §103.5(a)(3).

The Petitioner also asserts that we "regrettably . . . failed to accept that the Petitioner had an extremely prestigious and important judging appointment as a member of the [redacted] Committee under the Russian State Duma of the VI convocation, i.e. the Russian Parliament." Here, the Petitioner maintains that the previously submitted evidence "clearly establishes the Petitioner's appointment by preponderance of the evidence."

In our prior decision, we clearly explained why the evidence submitted to document the Petitioner's appointment to this committee (also referred to as the [redacted]) was insufficient. The Petitioner relied on his own affidavit and on a letter from [redacted], [redacted] whose own affiliation to the [redacted] is not documented in the record. The Petitioner did not submit evidence from the [redacted] of the Russian State Duma confirming his membership on this council, nor is there are primary source information to support [redacted]'s claims regarding the membership requirements of the [redacted] We weighed the probative value of the affidavit and letter and we concluded that the unsupported testimonial evidence alone was insufficient to support the Petitioner's claims regarding his membership in the [redacted] The Petitioner disagrees with our assessment of this evidence; however, the Petitioner does not address how we erred as a matter of law or policy in our evaluation.

The Petitioner also disagrees with our determination that he was not the recipient of a 2007 Commercial Real Estate (CRE) Award. In our decision, we noted that the record reflects that the award in question was "given to [redacted] for Participation in Realization of project [redacted] We emphasized that "[t]he description of this type of evidence in the regulation provides that the focus should be on 'the alien's' receipt of the awards or prizes, as opposed to his or her employer's receipt of the awards or prizes."[2] The Petitioner indicates that he established his "central role" in his employer's receipt of the award through his previously submitted affidavit, but does not claim that he was the direct recipient or claim that we incorrectly applied the law or USCIS policy in our assessment of this evidence. We also determined that even if the Petitioner had established that he was the recipient of the CRE award, he did not show that this award from 2007, or other awards he received as a student in 2000, are indicative of the *sustained* national or international acclaim required by section 203(b)(1)(A) of the Act. The Petitioner does not address this conclusion on motion or explain how his claimed receipt of a CRE award in 2007, even if it was a nationally recognized award, evidences his sustained acclaim in his field.

Finally, the Petitioner claims that our prior decision "failed to comment on" evidence of "industry-wide acceptance of the beneficiary's developed approach as a nationwide industry standard," and resubmits expert opinion letters from [redacted] and [redacted] We addressed both letters in our decision, noting that the authors indicated that they based their opinions on the information provided in the Petitioner's affidavit rather than their own professional knowledge of his work. We determined that the letters summarized the Petitioner's professional accomplishments and

[2] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 6 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

employment history, but did not explain how the Petitioner's achievements have been considered by the field to be of major significance, or how he is viewed by the overall field as being among that small percentage at the very top of the field of endeavor.

Turning to the Petitioner's specific claim that the letters of [redacted] and [redacted] established "industry-wide acceptance" of his own "developed approach," we note that [redacted] states that the Petitioner "successfully applied his innovative methodologies and approaches to [redacted] and [redacted] solutions in major construction projects across Russia." He does not comment on an "industry-wide acceptance" of the Petitioner's methodologies or their incorporation into a "nationwide industry standard." [redacted] states that the Petitioner developed a "unique evaluation method" that is "applicable to any development project to differentiate and improve the production process." He notes the "potential" of the approach and states that the method "is of great interest to all in the manufacturing field." However, like [redacted] he does not confirm that there has been "industry-wide acceptance" of the approach or indicate that the Petitioner's methodology become a "nationwide industry standard."

The Petitioner's motion to reconsider also includes a new expert opinion letter dated April 24, 2019 from [redacted] and recent evidence pertaining to the Beneficiary's company, [redacted] as "proof of the evidence[d] national interest in the Petitioner's continued engagement in his field." As discussed, a motion to reconsider must establish that our prior decision was incorrect based on the evidence of record at the time of the initial decision and does not allow for the consideration of new evidence.

For the reasons discussed above, the Petitioner has not demonstrated that our appellate decision was incorrect. We conducted a *de novo* review of the record on appeal, thoroughly analyzed the evidence, and ultimately concluded that while the Petitioner satisfied at least three of the evidentiary criteria, he did not establish the sustained national or international acclaim required for this highly restrictive classification. The Petitioner does not show how we erred and or demonstrate that we misapplied law or policy to the facts presented. Accordingly, the Petitioner did not satisfy the requirements for a motion to reconsider.

In addition, the Petitioner's motion does not include the required "statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding." 8 C.F.R. § 103.5(a)(1)(iii). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

IV. CONCLUSION

For the reasons discussed above, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision.

ORDER: The motion to reconsider is dismissed.